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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 963

INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS, AFL-CIO

AND

LOCAL 845, INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS, AFL-CIO

AND

LEROY FRANCIS SIMMS

AND

FLOYD VAN DEUSEN,

Petitioners,

v.

SOLO CUP COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

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LEROY FRANCIS SIMMS

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FLOYD VAN DEUSEN,

Petitioners,

V.

SOLO CUP COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

Petitioners pray that a Writ of Certiorari issue to review the judgment of the Court of Appeals of Maryland entered in the above entitled case on December 7, 1964.

OPINIONS BELOW

The opinion of the Court of Appeals of Maryland is reported in 237 Md. 479 and 205 A. 2d 213 in (Appendix

A, *infra*, pages 1a to 7a). The decision of the lower Court is unreported but was reproduced in the printed appendix, which was filed with the Appellant's brief in the Court of Appeals of Maryland and is being certified to this Court; said lower Court decision, as well as a memorandum of law which was filed by the defendants and adopted by the lower Court in its decision (Appendix B, *infra*, pages 7a to 24a).

JURISDICTION

The judgment of the Court of Appeals of Maryland was entered on December 7, 1964 (Appendix "A" page 1a, *infra*). The jurisdiction of this Court is invoked under 28 U.S.C. 1257.

QUESTION PRESENTED

The opinion and decision of the Court of Appeals of Maryland in this case raises the following question:

Whether a State Court has jurisdiction to entertain a Declaration, sounding in tort, filed by an employer seeking to recover damages because allegedly certain activities of persons, who are employees of said employer and members of a labor union or officers of an International Union (said union having been lawfully certified as the bargaining agent for the employees of said employer) are tortious in nature when said activities are protected by Section 7 or prohibited by Section 8 of the National Labor Relations Act as amended by the Labor Management Relations Act?

Stated in another manner does the National Labor Relations Board have exclusive jurisdiction over union activities when said activities constitute unfair labor practices

as defined in the National Labor Relations Act as amended by the Labor Management Relations Act?

STATUTE INVOLVED

The relevant portions of the National Labor Relations Act, as amended (61 Stat. 136, 140, 146, 29 U.S.C., (1958 ed.) Secs. 141, *et seq.*) are set forth in Appendix D, page 28a, *infra*.

STATEMENT

The Respondent, Solo Cup Company, a Delaware corporation with its principal place of business in Chicago, Illinois, engages in interstate commerce and has a manufacturing plant in Baltimore County, Maryland. The International Brotherhood of Pulp, Sulphite and Paper Mill Workers, AFL-CIO, one of the Petitioners herein, is a labor union and organization affiliated with the AFL-CIO with many offices located throughout the United States including an office in Baltimore City, Maryland, located at 305 West Monument Street. The Petitioner, Local 845, International Brotherhood of Pulp, Sulphite and Paper Mill Workers, AFL-CIO is a Baltimore local of the International Union. Another Petitioner, Floyd Van Deusen, is a representative of the International Union and has been the union leader in organizing, Respondent, Solo Cup Company's employees for representation by the aforesaid Unions and has acted as an agent for and on behalf of the International and Local Unions. The remaining Petitioner, Leroy Francis Simms, was a representative of Local Union 845 and had also been active in the organizing of Respondent's employees for representation by the aforesaid unions. Additionally, Petitioner, Leroy Francis Simms, was a member of the bargaining committee of Local 845 and at the time of the occurrences complained of in the Declaration, he was an employee of the Respondent, Solo Cup Company.

The National Labor Relations Board on January 12, 1962, certified Local 845 of the International Brotherhood of Pulp, Sulphite and Paper Mill Workers, AFL-CIO, one of the Petitioners herein, as the official bargaining representative of all the employees of Respondent, Solo Cup Company, except for office clericals, professional employees, guards and supervisors. Thereafter, the Petitioners offered, on numerous occasions to meet with Respondent for the purposes of arriving at a collective bargaining agreement, however, the Respondent was usually reluctant to meet with the Petitioners; in fact, on many occasions the Respondent refused to meet with the Petitioners. Consequently on October 30, 1962, the Petitioner, International Brotherhood of Pulp, Sulphite and Paper Mill Workers, AFL-CIO, filed charges with the National Labor Relations Board, located at Baltimore, Maryland, alleging that Solo Cup Company, the Respondent herein violated Section 8(A)(5) and (1) of the National Labor Relations Act by refusing to bargain with the Union. The National Labor Relations Board, after a hearing, found that the Respondent, Solo Cup Company, had violated the aforementioned section of the Act, by refusing to bargain with the Union in good faith. The findings of fact, conclusions of law and order of the Board are reported at 142 NLRB No. 130 and Volume 53 Labor Relations Reference Manual, page 1253, *et seq.*

Petitioner, Local 845 of the International Brotherhood of Pulp, Sulphite and Paper Mill Workers, AFL-CIO, called a strike of its members employed at Respondent's Baltimore plant, on November 1, 1962. (Reasons: the Company had refused to recognize and bargain with the Union after Union's certification.) Shortly, thereafter, the Respondent, on December 13, 1962, filed charges with the National Labor

Relations Board located at Baltimore, Maryland, alleging in substance that the Petitioners, Leroy Francis Simms, the International Union and Local 845 of the Union, were engaged in unfair labor practices as defined by Section 8(B)(1)(A) of the National Labor Relations Act. Parenthetically it might be noted that said unfair labor charges in substance were the same acts which were subsequently enumerated in the Declaration, filed by the Respondent in the lower Court, which is now the subject of this Petition. The Board, after a hearing on the aforesaid charges, on April 16, 1963, concluded that the Petitioners engaged in unfair labor practices as prescribed by the Act. The finding of fact, conclusion of law and order of the Board are reported at 144 NLRB No. 48 and Volume 54 Labor Relations Reference Manual, page 1074, *et seq.* (Appendix C, *infra*, pages 24a to 27a).

Approximately ten (10) months later the Respondent, on the 22nd day of October, 1963, filed this damage suit in the Superior Court of Baltimore City, Maryland. The Declaration (Appendix B, pages 7a to 12a, *infra*) alleges that the Petitioner herein did commit certain acts for the purposes of coercing employees of the Respondent who had not joined the strike, hereinabove mentioned, to do so. In replying to the Respondent's Declaration, Petitioners herein filed a "Special Plea to the Jurisdiction" alleging that the State Court's jurisdiction to enter the suit was pre-empted by the National Labor Relations Act as amended by the Labor Management Relations Act. The Petitioners reply pleas are printed in Appendix B, page 12a, *infra*.

Thereafter, at the suggestion of the lower Court, law memorandums were filed by the parties to this case and on February 18, 1964, Judge Anselm Sodaro of the Superior

Court of Baltimore City, Maryland, sustained Defendants' (Petitioners herein) Special Plea to Jurisdiction. Judge Sodaro in sustaining the Defendant's plea did not file a written opinion, however, in a letter, filed in the case, the Court stated it was adopting the reasoning and conclusions of law as set forth in the memorandum of counsel for the defendants. The decision of the Lower Court as well as the memorandum of counsel for the defendants are printed in Appendix B, page 13a, *infra*. Consequently, as a result of lower Court's decision, there was entered on the docket, on February 18, 1964, a judgment absolute in favor of the defendants for the costs of the suit.

Respondent, Solo Cup Company, timely noted an appeal from the lower Court's decision to the Court of Appeals of Maryland. On December 17, 1964, the Court of Appeals of Maryland reversed the lower Court decision and remanded the case for further proceedings; whereupon, the Petitioners herein filed a Motion in the lower Court to Stay the Proceedings so that said Petitioner could file this Petition for a Writ of Certiorari. The Respondents filed an answer opposing the Petitioner's Motion to Stay Proceedings and said Motion is still pending before the lower Court.

REASONS FOR GRANTING PETITION

I.

Although the question of law presented is a narrow one, the decision below is directly contrary in both reasoning and result, to the decisions of this Court in *Garner v. Teamsters, Chauffeurs and Helpers Local Union No. 776, et al.*, 346 U.S. 485, 74 S. Ct. 161, 98 L. Ed. 228 (1953), *Weber v. Anheuser-Busch, Inc.*, 348 U.S. 468, 75 S. Ct. 480, 99 L. Ed. 546 (1955), *San Diego Building Trades Council v.*

Garmon, 359 U.S. 236, 79 S. Ct. 773, 3 L. Ed. 2d 775 (1959). Furthermore, the lower Court's decision, if allowed to stand, would circumvent or defeat the purpose of the National Labor Relations Act as amended by the Labor Management Relations Act. It is respectfully submitted that this Court should resolve the aforesaid conflict.

The result of the lower Court's decision was to bestow concurrent jurisdiction upon the National Labor Relations Board and the State Courts; thereby, giving both tribunals the power to regulate and control unfair labor practices. This result, as stated aforesaid, is contrary and in conflict with decisions made by this Court. In *Weber v. Anheuser-Busch, Inc., supra*, (348 U.S. 481, 75 S. Ct. 488) the Court stated:

> "We realize that it is not easy for a State Court to decide, merely on the basis of a complaint and answer whether the subject matter is the concern exclusively of the Federal Board and withdrawn from the State. * * *. But where the moving party itself alleges unfair labor practices where the facts reasonably bring the controversy within the sections prohibiting these practices and where the conduct, if not prohibited by the Federal Act, may be reasonably deemed to come within the protection afforded by that Act, the State Court must decline jurisdiction in deference to the tribunal which Congress has selected for determining such issues in the first instance."

This Court further considering the question of a State Court's jurisdiction in the area of unfair labor practices stated in *San Diego Building Trades Council v. Garmon*, supra (359 U.S. 245, 79 S. Ct. 780):

> "When an activity is arguably subject to Section 7 or Section 8 of the Act, the States as well as the Federal Courts must defer to the exclusive competence of the National Labor Relations Board, if the danger of state interference with national policy is to be averted."

A fortiori the State Court must yield jurisdiction to the National Labor Relations Board where activities of a labor union are found by the State Court to be unfair labor practices under Section 8 of the National Labor Relations Act: especially where the National Labor Relations Board has previously and is continuing to exercise jurisdiction of the same activities. The case before this Court is just such a case. The Court of Appeals of Maryland in arriving at its decision found that the National Labor Relations Board had previously exercised jurisdiction over the subject matter. Said the Court (237 Md. 146, 205 A. 2d 214, 215):

> "The narrow question presented is whether a Maryland Court has jurisdiction to entertain a common law tort action where certain of the allegedly tortious acts have previously been found by the National Labor Relations Board to be unfair labor practices under Section 8 of the National Labor Relations Act. We believe that in light of certain recent decisions of the United States Supreme Court the question must be answered in the affirmative."

Petitioners herein respectfully submit that the question raised in the lower Court should have been answered in the negative. This Court in *San Diego Building Trades Council v. Garmon*, supra, stated (359 U.S. 244, 79 S. Ct. 779):

> *"When it is clear or may fairly be assumed that the activities which a State purports to regulate are protected by Section 7 of the National Labor Relations Act, or constitute an unfair labor practice under Section 8 due regard for the federal enactment requires that state jurisdiction must yield."* (Emphasis supplied.)

This Court went on to state that to leave the state free to exercise jurisdiction in this area would lead to a conflict

between powers of Congress and state law. Said this Court (359 U.S. 244, 79 S. Ct. 779):

> "To leave the states free to regulate conduct so plainly within the central aim of federal regulations involves too great a danger of conflict between power asserted by Congress and requirements imposed by state law. Nor has it mattered whether the States have acted through laws of broad general application rather than laws specifically directed towards the governance of industrial relations. Regardless of the mode adopted, to allow the States to control conduct which is the subject of national regulations would create potential frustration of national purposes."

The pre-emption doctrine was most clearly projected in *Garner v. Teamsters, Chauffeurs and Helpers Local Union No. 776 (AFL), et al.*, supra. In this case the Supreme Court of Pennsylvania, 373 Pa. 19, 94 A. 2d 893 (1953) was presented with issues almost identical to the issues in this case, that is, whether the National Labor Relations Act had pre-empted the area of unfair labor practices to the extent that State Courts could not exercise jurisdiction over the same subject matter. The lower Court after reviewing the National Labor Relations Act and applicable decisions of this Court concluded that State Court jurisdiction was ousted when the subject matter was within the purview of the National Labor Relations Act. Said the lower Court:

> "In our opinion such provisions for a comprehensive remedy precluded any State action by way of a different or additional remedy for the correction of the identical grievance."

When the *Garner* case, supra, was before this Court, Mr. Justice Jackson stated, the question is whether the State, through its Courts, may adjudge the same contro-

versy and extend its own form of relief. This Court answered the question by deciding that the State Court did not have jurisdiction of the subject matter because the alleged wrongs could have been presented to the National Labor Relations Board. Said the Court (346 U.S. 490, 491, 74 S. Ct. 165, 166):

> "Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties. It went on to confide primary interpretation and application of its rules to a specific and specially constituted tribunal and prescribed a particular procedure for investigation, complaints and notice, and hearing and decision, including judicial relief pending a final administrative order. Congress evidently considered that centralized administration of specially designed procedures was necessary to obtain uniform application of its substantive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies.* * *. A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law. The same reasoning which prohibits federal courts from intervening in such cases, except by way of review or on application of the federal board, precludes State Courts from doing so."

The basic rationale of the Garner and Garmon cases would be defeated if the lower Court's opinion in this case was allowed to stand. It cannot be doubted that the National Labor Relations Board had jurisdiction over this entire controversy, a fact the lower Court accepted. If the lower Court's opinion was to become the law of labor relations, State Courts could defeat the carefully protected uniformity which is the very reason for the doctrine of preemption under Section 10(a) of the Act, for regardless

of the particular fact situation, an award for damages could be granted where the Board had exercised its jurisdiction in a matter.

II.

There exists a high degree of uncertainty as to the interpretation of several cases, to be discussed herein, by the U.S. Supreme Court relative to the jurisdiction of State Courts and the National Labor Relations Board where either employer, employee or union conduct constitutes tortious conduct under state law and an unfair labor practice under the National Labor Relations Act, as amended by the Labor Management Relations Act (1947). In *United Construction Workers, et al. v. Laburnum Construction Corporation*, 347 U.S. 656, 74 S. Ct. 833 (1954) the U.S. Supreme Court sustained a Virginia high Court ruling that allowed recovery of damages by an employer against a labor union for conduct by the union members that was a tort under Virginia law. The Court assumed that the conduct also constituted an unfair labor practice under the Federal Act. The broad question posed by the Court in this case was:

> "Whether the Labor Management Relations Act, 1947, has given the National Labor Relations Board such exclusive jurisdiction *over the subject matter of a common law tort action for damages* as to preclude an appropriate State Court from hearing and determining its issues where such conduct constitutes an unfair labor practice under that Act." (Emphasis supplied.)

The Court held that it was not. The issue decided was therefore relevant to *common law tort actions*, even though the Court did discuss the differences in the nature of the tortious conduct involved. The dissenting opinion of Justice Douglas, with whom Justice Black concurred, in

essence, stated that for each wrong which the Federal Act recognizes the parties have only the remedy supplied by that Act for the reason that the Act was designed to decide labor-management controversies and to bring them to a peaceful, orderly settlement. The right to sue for damages would negate any effective settlement by the National Labor Relations Board and would allow the labor wounds to remain open. The majority opinion allowed recovery for a common law tort but the dissent would deny that remedy.

The Supreme Court in *International Union, United Automobile, Aircraft and Agricultural Implement Workers, et, al. v. Russell,* 356 U.S. 634, 78 S. Ct. 932 (1958), through Justice Burton said, again in broad language, that:

> "Congress had not given the National Labor Relations Board such exclusive jurisdiction over the *subject matter of a common law tort action for damages* as to preclude an appropriate State Court from hearing and determining its issues where such conduct constitutes an unfair labor practice under the Labor Management Relations Act, 1947, or the National Labor Relations Act as amended." (Emphasis supplied.)

The Court in this case upheld the right of a State Court to entertain a suit for tort damages and allowed recovery by an employee against a labor union even though it was assumed that the conduct involved was also an unfair labor practice. The Court again discussed the nature of the conduct involved but its holding was broad and included, "common law torts". The dissent by Chief Justice Warren, with whom Justice Douglas concurred, would require reversal of State Court damages because of the impact on the purposes and objectives of the Federal Act. He said that allowance of such recoveries would inevitably influence and unsettle the conduct of labor disputes. The

effect, it is clear, according to the dissent, would be to defeat the very purposes of the Act.

The Supreme Court of the United States in *San Diego Building Trades Council, et al. v. Garmon*, supra, held that the California Courts could not exercise jurisdiction where an employer brought a tort action under State law against unions because the conduct involved was arguably within the compass of the National Labor Relations Act. This is a ruling contrary to the broad rulings discussed previously in the *Laburnum* and *Russell* cases. The concurring opinion, by three justices, held that the nature of the tortious conduct could not be distinguished for purposes of implementing the National Labor Relations Act.

Therefore, the guiding principles of these cases are uncertain and productive of much litigation. *Fullerton v. International Sound Technicians, etc.*, 15 Cal. Rptr. 451, (Calif. 1961); *Harry S. Goodman Productions, Inc. v. Collyer*, 204 N.Y.S. 2d 1001 (New York 1960); *Kominski v. Western Express Co.*, 234 N.Y.S. 2d 976 (New York 1962); *Stork Restaurant, Inc. v. Fernandez*, 185 N.Y.S. 2d 280 (New York 1959); *Precision Scientific Co. v. International Union, etc.*, 120 N.E. 2d 356 (Illinois 1954); *Terrizzi Beverage Company v. Local Union No. 830, etc.*, 184 A. 2d 243 (Pensylvania 1962); *Blum v. International Association of Machinists, AFL-CIO*, 192 A. 2d 842 (New Jersey 1963).

The Court of Appeals of Maryland, in the present case, at page 149 of its opinion, states that "any doubts as to any interpretation of the effect of the Supreme Court cases considered by us above is set at rest by the recent case of *Teamsters Union v. Morton*, 377 U.S. 252, 84 S. Ct. 1253 (1964). The Court of Appeals thus does express at least an admission of an incipient doubt which is in their view allayed by the *Morton* case. The Supreme Court in that

case did discuss violent and non-violent torts but this was *dicta* not necessary to the holding in that case. Therefore, the doubt expressed by the Maryland Court of Appeals was not and is not dispelled by the *Morton* case, and the uncertainty of the previous Supreme Court rulings remain.

It is, therefore, incumbent upon the Supreme Court of the United States to resolve this jurisdictional ambiguity between the State Courts and the National Labor Relations Board where tortious conduct also constitutes an unfair labor practice under the National Labor Relations Act. The Petitioners contend that the said conflict should be resolved in favor of federal pre-emption.

III.

If this Court finds that the previous cases decided by it hold that State Courts do have jurisdiction over conduct which constitutes unfair labor practices within the National Labor Relations Act, as amended by the Labor Management Relations Act, 1947, where that conduct is also tortious, then it should reconsider its holdings and overrule these decisions for the reasons given hereafter:

1st: It is defeating of the purposes of the National Labor Relations Act to allow State Courts to entertain and decide tort actions between parties protected by the Act, since it is evident such actions would be used as pressure devices to prolong labor conflicts. This was the reasoning expounded by the dissenting opinions in *United Construction Workers, et al. v. Laburnum Construction Corporation*, supra, and *International Union, United Automobile, Aircraft and Agricultural Implement Workers, et al. v. Russell*, supra.

The purpose of the National Labor Relations Act is to minimize industrial strife in an orderly manner. The

purpose of the Act is clearly set out in U.S.C.A. Title 29, Section 141(b), as follows:

> "Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.
>
> "It is the purpose and policy of this chapter, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations, whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce."

The Petitioners allege that State jurisdiction of tort actions, which also constitute unfair labor practices, is an intrusion upon the enunciated legislation purpose.

2nd: Distinguishing violent and non-violent torts with reference to the jurisdiction of State Courts and the National Labor Relations Board in the tort area serves no valid purpose. If these are distinguished, then an injustice is obvious. The party who has grounds for a tort action, must go remediless where the tort cannot be classed as violent even though he could suffer greater damage than one injured by a violent tort; as in *Blum v. International Association of Machinists, AFL-CIO*, 192 A. 2d 842 (New

Jersey) where the tort pertained to libelous material which adversely affected an entire business; and as in *Kominski v. Western Express Co.*, 234 N.Y.S. 2d 976 (New York) where an employee was forced to resign because of allegations by the employer of larceny.

A tort action is an action which allows recovery of damages and the recovery flows to an individual or composite entity, such as a corporation. A tort is defined in 52 Am. Juris. 362, Torts, Section 2, as:

> "Generally speaking, a tort is a wrong, and a tortious act is a wrongful act * * * although the same act may constitute both a crime and a tort, the crime is an offense against the *public* pursued by the sovereign, while the tort is a private injury which is pursued by the injured party."

Allowance of tort recoveries does not serve to protect the public. There is no overriding public interest to protect. The public is protected by state criminal measures and the right of the state to enjoin conduct violative of the public peace or welfare. Therefore, it is by these remedies and not by a tort action that the public is protected. The benefit of any distinction between violent and non-violent torts inures only to the individual or other entity involved and not to the public.

Since a tort is a private injury it follows that recovery under a tort theory, as allowed in *United Construction Workers, et al. v. Laburnum,* supra, and *International Union, United Automobile, Aircraft and Agricultural Implement Workers, et al. v. Russell,* supra, should either extend to all tort actions regardless of the nature of the conduct involved, or to none. The interest to be protected is private and there seem little logic in protecting some private interests and allowing others to go unprotected. The tort jurisdiction should, therefore, stand or fall in its entirety

3rd: The National Labor Relations Act pre-empts from state jurisdiction conduct which falls or arguably falls within the ambit of that Act. Justice Shapiro speaking for the Court in the case of *Harry S. Goodman Products, Inc. v. Clayton Collyer, etc., et al.*, 204 N.Y.S. 2d 1001, stated at page 1008:

> "In April of 1959 in *San Diego Building Trades Council v. Garmon* * * * the Court laid down the rule that even where activity of a labor union was only 'arguably' within the compass of the National Labor Relations Act, *a State Court was deprived of jurisdiction even if the defendant's conduct constituted a tort under State law.*" (Emphasis supplied.)

Where activities are defined by the National Labor Relations Act as unfair labor practices and by the State Court as tortious conduct said activities should be considered and regulated solely by the National Labor Relations Board and where State Courts award damages for unfair labor practices, disguised or labelled as common-law torts, there is State regulation and control over activities which are within the area of the National Labor Relations Act. This area of dual control is precisely the conflict which Congress sought to avoid.

In *San Diego Building Trades Council v. Garmon*, supra, this Court stated (359 U.S. 246, 247, 79 S. Ct. 780):

> "Nor is it significant that California asserted its power to give damages rather than to enjoin what the Board may restrain though it could not compensate. Our concern is with delimiting areas of conduct which must be free from state regulation if national policy is to be left unhampered. Such regulation can be as effectively exerted through an award of damages as though some form of preventive relief. The obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy Even the States' salutary effort to redress

> private wrongs or grant compensation for past harm cannot be exerted to regulate activities that are potentially subject to the exclusive federal regulatory scheme."

It is apparent that if tort actions are allowed to wedge into the federally created machinery of the National Labor Relations Act it will break down, erode and undermine the Act.

Therefore this Court should hold in the present case that: the State Court is precluded from taking jurisdiction of any tort action, whether it involves violent or non-violent conduct, where the conduct involved is clearly an unfair labor practice or where the conduct arguably falls within the National Labor Relations Act as amended by the Labor Management Relations Act of 1947.

CONCLUSION

For the foregoing reasons, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX A

COURT OF APPEALS OF MARYLAND
(No. 43, September Term 1964)

SOLO CUP COMPANY

v.

INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS, AFL-CIO, ET AL.

Argued before Henderson, C.J., Hammond, Prescott, Horney and Sybert, J.J.

OPINION OF THE COURT
December 7, 1964

Sybert, J., delivered the Opinion of the Court.

We are confronted in this case with the question, novel in Maryland, whether or not the State courts have jurisdiction to entertain a common law tort action for damages for injuries sustained as the result of violence in a labor dispute.

The appellant, Solo Cup Company, a Delaware corporation with its principal place of business in Chicago, Illinois, engages in interstate commerce and has a manufacturing plant in Baltimore County, Maryland. Two of the appellees are the International Brotherhood of Pulp, Sulphite and Paper Mill Workers, AFL-CIO, a labor union with one of its offices in Baltimore City, and Local 845, International Brotherhood of Pulp, Sulphite and Paper Mill Workers, AFL-CIO, a Baltimore local of the international union; and the two individual appellees are representatives of the international and the local unions respectively.

On January 12, 1962, Local 845 was certified as the official bargaining representative of certain of the appellant's employees. The appellees state in their brief that the appellant was reluctant to meet with them to discuss

a collective bargaining agreement, and that for this reason the International Union filed charges with the Baltimore office of the National Labor Relations Board (NLRB or Board) on October 30, 1962, alleging that Solo Cup had violated section 8(A)(5) and (1) of the National Labor Relations Act (NLRA or Act), and that after a hearing the Board found that Solo had violated the Act by refusing to bargain with the Union in good faith. The Local call a strike of its members employed by Solo Cup on November 1, 1962. On December 13, 1962, Solo Cup filed charges with the NLRB in Baltimore alleging that the appellees were engaged in unfair labor practices under sec. 8 of the NLRA. On April 16, 1963, after hearing, the NLRB found that the appellees were engaged in unfair labor practices and issued a cease and desist order.

Solo Cup filed a common law tort action for damages in the Superior Court of Baltimore City against the appellees on October 22, 1963, alleging substantially the same acts of the appellees and their agents which were the basis for the NLRB's cease and desist order of April 16, 1963. The alleged tortious acts complained of in the declaration may be summarized as direct threats to employees; damage of appellant's property; damage of homes and other property of appellant's employees, including slashing of tires and convertible tops, putting sugar in gas tanks and throwing paint on automobiles; and the "shooting up" of the homes and automobiles of certain of appellant's employees by the use of firearms. According to the appellant, these acts occurred during the period beginning at about the commencement of the strike, November 1, 1962, and ending about December 4, 1962, and were engaged in to injure the appellant's business and to coerce employees of the appellant into joining the strike. The appellant alleged that it paid for the physical damages caused by the above mentioned acts. The declaration claims damages for the physical injuries as well as for economic injury to the appellant's business.

The appellees filed a special plea to the jurisdiction of the court below, claiming that by reason of the National

Labor Relations Act and the Taft-Hartley Act the jurisdiction of a state court in an action such as this is precluded under the theory of federal premption of the field. The court sustained the plea to the jurisdiction and rendered a judgment for costs against Solo Cup, which then entered this appeal.

The narrow question presented is whether a Maryland court has jurisdiction to entertain a common law tort action where certain of the allegedly tortious acts have previously been found by the NLRB to be unfair labor practices under sec. 8 of the National Labor Relations Act. We believe that in the light of certain recent decision of the United States Supreme Court the question must be answered in the affirmative.

Although each side cites many cases to support its position, we believe that four cases are determinative of the question. The other cases cited by appellees, such as *Garner v. Teamsters Local No. 776*, 346 U.S. 485 (1953), deal either with the question of a State's jurisdiction to grant an injunction in situations similar to the one before us or with breaches of contract. Therefore we do not believe them to be in point here.

The most significant case for present purposes is *United Workers v. Laburnum Corp.*, 347 U.S. 656 (1954), in which the employer had brought a common law tort action against the union in a Virginia state court to recover both compensatory and punitive damages. The question decided there seems to have been basically the same as the one before us, *i.e.* (p. 657):

> "* * * Whether the Labor Management Relations Act, 1947, has given the National Labor Relations Board such exclusive jurisdiction over the subject matter of a common-law tort action for damages as to preclude an appropriate state court from hearing and determining its issues where such conduct constitutes an unfair labor practice under that Act."

The Supreme Court answered this question in the negative under the facts of the case before it. The conduct com-

plained of involved the intimidation of officers and employees of the corporation and threats of violence to them which caused substantial work stoppages. The employer was seeking damages primarily for loss of profits. It does not appear that any actual physical damages were involved. The following language from the opinion (pp. 663-664) shows the basis for that decision (and for ours here):

> "* * * Congress has neither provided nor suggested any substitute for the traditional state court procedure for collecting damages for injuries caused by tortious conduct. For us to cut off the injured respondent from this right of recovery will deprive it of its property without recourse or compensation. To do so will, in effect, grant petitioners immunity from liability for their tortious conduct."

The *Laburnum* decision was followed in *Automobile Workers v. Russell*, 356 U.S. 634 (1958). In that case an employee brought a tort action against a union in an Alabama state court. He claimed compensatory and punitive damages. The employee alleged that because of threats of bodily injury and actual property damage (to his automobile) he was prevented by the union from crossing a mass picket line and entering his place of employment and thus lost time from work. The Supreme Court upon the authority of *Laburnum* upheld the state court's jurisdiction to award damages even though under the NLRA the employee could at least have recovered back wages.

In the light of these decisions we conclude that the Maryland court has jurisdiction in the case before us. And we suffer no qualms by reason of the later case of *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236 (1959). There the Supreme Court held that under the facts before it a California state court lacked jurisdiction to award damages because of the NLRA, but a close analysis of the opinion discloses that the *Laburnum* decision was not overruled, but merely clarified to some extent. The portion of the facts in *Garmon* with which we are concerned here

are as follows: an employer sued for damages in a tort action brought in a state court. The conduct of the union which the employer alleged to support its claim for damages was peaceful picketing only. There was no evidence of actual or threatened violence. Although the Supreme Court used somewhat broad language in explaining its decision, it was careful to distinguish its earlier decisions. The following language supports, we feel, our conclusion that the case before us is one properly within the jurisdiction of the court below (pp. 247-248 of 359 U.S.):

> "It is true that we have allowed the States to grant compensation for the consequences, as defined by the traditional law of torts, of conduct marked by violence and imminent threats to the public order. [Citing *Russell* and *Laburnum*.] * * * State jurisdiction has prevailed in these situations because the compelling state interest, in the scheme of our federalism, in the maintenance of domestic peace is not overridden in the absence of clearly expressed congressional direction. We recognize that the opinion in [*Laburnum*] * * * found support in the fact that the state remedy had no federal counterpart. But that decision was determined, as is demonstrated by the question to which review was restricted, by the 'type of conduct' involved, i.e., 'intimidation and threats of violence'. In the present case there is no such compelling state interest."

The appellees maintain that *Garmon* precludes the state court from entertaining the suit here because there is no longer any imminent threat to public order. But even if it could be assumed that the effects of the actual disorder do not linger, we do not agree that jurisdiction is thus precluded. The significant point is that, at the time of the acts of violence complained of, there was an imminent threat to, and, indeed, disruption of, public order, and under such circumstances the State is vitally interested. Moreover, the wounds of the victims persist beyond the infliction of the blows. The appellees' theory is novel. They

cite no authority for the proposition that an action to recover for injury resulting from a tort, to be maintainable, must be filed during the continuance of the tort. We are loath to believe that the Supreme Court intended this result to flow from *Garmon*. Otherwise *Laburnum*, which was not overruled, would be rendered virtually nugatory. The theory advanced, extended to its logical conclusion, would mean that if violence were discontinued at any stage of the litigation, the suit must perforce be dismissed, only to have the litigious treadmill reactivated or halted at the caprice of those responsible for violence. We do not think the interpretation contended for can reasonably be distilled from the NLRA or the Supreme Court decisions. Application of such a theory would in some cases be tantamount to state condonation of violence during labor disputes.

Any doubt as to our interpretation of the effect of the Supreme Court cases considered by us above is set at rest by the recent case of *Teamsters Union v. Morton*, 377 U.S. 252 (1964), which involved a suit filed by an employer in a federal District Court under sec. 303 of the Labor Management Relations Act and state common law to recover for business losses caused by certain peaceful secondary boycott activities of a union. Although finding them inapplicable to the case before it, the Supreme Court recognized the line of cases holding state law to be applicable in situations where union activities involving violence were present, stating (at p. 257) that "* * * in cases involving union violence, state law has been permitted to prevail by reason of controlling considerations which are entirely absent in the present case," and citing *Laburnum*, *Russell* and *Garmon* in support.

Finally, the appellees contend that the *Garmon* decision precludes state jurisdiction where the NLRB has taken jurisdiction, as here. But *Garmon* cannot be read as standing for such a broad rule. The facts alleged in the instant case involve violence, not mere peaceful picketing. *Laburnum* has not been overruled; in fact it has been reaffirmed this year in *Morton*, and we think it is controlling here.

We hold that this suit is within the jurisdiction of the trial court.

JUDGMENT REVERSED AND CASE REMANDED FOR FURTHER PROCEEDINGS; APPELLEES TO PAY THE COSTS.

APPENDIX B

PLEADINGS, LAW MEMORANDUM AND DECISION OF THE TRIAL COURT

DECLARATION

Solo Cup Company, a body corporate, by its attorneys, Robert L. Sullivan, Jr., Barry I. Robinson and Sklar and Sullivan, sues the International Brotherhood of Pulp, Sulphite and Paper Mill Workers, AFL-CIO; Local 994, International Brotherhood of Pulp, Sulphite and Paper Mill Workers, AFL-CIO; Leroy Francis Simms and Floyd Van Deusen, Defendants, and states:

1. That the Plaintiff, Solo Cup Company, is a Delaware corporation with its principal place of business located in Chicago, Illinois, and with a manufacturing plant located in Baltimore County, Maryland.

2. That the Defendant, International Brotherhood of Pulp, Sulphite and Paper Mill Workers, AFL-CIO, is a labor union and organization affiliated with the AFL-CIO and with many offices located throughout the United States, including an office at Baltimore, Maryland.

3. That the Defendant, Local 994, International Brotherhood of Pulp, Sulphite and Paper Mill Workers, AFL-CIO, is the Baltimore local of the International Brotherhood of Pulp, Sulphite and Paper Mill Workers, AFL-CIO, and an agent or affiliate thereof.

4. That the Defendant, Floyd Van Deusen, has been since the date of certification hereinafter set forth, and still is, a representative of the aforesaid International; has been the leader in the organizing of Plaintiff's employees for repre-

sentation by the aforesaid Union; and has always acted as an agent on behalf of the aforesaid International and Local Unions.

5. That the Defendant, Leroy Francis Simms, has been since the date of certification hereinafter set forth, and still is, a representative of the aforesaid Defendant, Local 994; has been active in the organizing of the Plaintiff's employees for representation by the aforesaid Union; has since been elected as President of the aforesaid Local 994 and is a member of the employee's bargaining committee for said Local; and at the times of the occurrences hereinafter complained of was an employee of Plaintiff.

6. That on or about the 12th day of January, 1962, Local 994, International Brotherhood of Pulp, Sulphite and Paper Mill Workers, AFL-CIO, was certified as the official bargaining representative of all the employees of Plaintiff except for office clericals, professional employees, guards and supervisors thereof.

7. That on or about the first day of November, 1962, the aforesaid employees of Plaintiff, being members of the Defendant Unions, elected to strike the manufacturing plant of Plaintiff located in Baltimore County, Maryland.

8. That the Defendants entered into an arrangement of conspiracy, by concert of action, to unlawfully damage, injure and interfere with Plaintiff and Plaintiff's business in the State of Maryland; that the activities of the Defendants as herein set forth were by pre-conceived plan and arrangement taken pursuant to joint and concerted action and through joint understanding of the Defendants, their agents, servants and employees; that the conspiracy and collusion between the Defendants, their agents, servants and employees, as hereinafter alleged, was entered into prior to the acts and transactions hereinafter referred to and was present throughout the same, so that the acts and representations hereinafter alleged were in furtherance of said conspiracy and collusion and was thereby the act of these Defendants.

9. That pursuant to and in furtherance of said unlawful conspiracy, the Defendants conspired to perform and did perform the following illegal acts:

A. On or about the 6th and 7th days of November, 1962, visited the property of Alta Mae Hull, an employee of the Plaintiff, and by the means of threats and warnings attempted to coerce and restrain said person in the exercise of her rights as guaranteed in Section 7 of the National Labor Relations Act of 1947, as amended.

B. That approximately two weeks after the beginning of the strike, did threaten and coerce one Bernard Hyser and did assault said person on two different occasions.

C. That on or about the 31st day of October, 1962. did threaten and assault one Austin Wilkins and did tell said person that the Defendants, their agents, servants and employees would assault and do bodily harm to other employees of Plaintiff, namely Gertrude McKnight and George Sadler.

D. That one George Sadler, an employee of the Plaintiff, did receive threatening phone calls from an anonymous caller who, although he remained undisclosed, was recognized as being one of the Defendants named herein, and that said George Sadler had his home and automobile "shot up" during the period of the strike and in close connection with the threats and warnings made to him and other employees of the Plaintiff.

10. That during the period commencing on or about the first day of November, 1962, and ending on or about the 4th day of December, 1962, the agents, servants, representatives and employees of the Defendants did harm, injure and cause damage to the personal property of the following employees of the Plaintiff as hereinafter set forth:

A. That on or about the 1st day of November, 1962, three tires on the automobile of Margaret McKinney were damaged.

B. That on or about the 2nd day of November, 1962, two tires on the automobile of Vernon Jessen were damaged.

C. That on or about the 4th day of November, 1962, paint was thrown on the car of John Hittel.

D. That on or about the 7th day of November, 1962, a window on the car of George Sadler was broken by a rock.

E. That on or about the 7th day of November, 1962, two front doors on the house belonging to Alta Mae Hull were damaged.

F. That on or about the 7th day of November, 1962, nails were thrown on the parking lot and shipping docks of the property of the Plaintiff, Solo Cup Company.

G. That on or about the 9th day of November, 1962, the car of George Sadler was damaged by rocks.

H. That on or about the 11th day of November, 1962, four tires on the automobile of Vernon White were damaged.

I. That on or about the 11th day of November, 1962, two tires were damaged and the convertible top on the automobile of Walter Conrad was damaged.

J. That on or about the 11th day of November, 1962, two tires on the automobile of Kenneth Martin were damaged.

K. That on or about the 11th day of November, 1962, two tires on the automobile of Ed Carroll were damaged.

L. That on or about the 17th day of November, 1962, two tires on the automobile of Dorothy Brazil were damaged.

M. That on or about the 19th day of November, 1962, two tires on the automobile of Sarah Brown were damaged.

N. That on or about the 21st day of November, 1962, sugar was put in the gas tank and paint was thrown on the automobile of George Sadler.

O. That on or about the 22nd day of November, 1962, a sack of flour was thrown into room through two glass doors of home of Elva Hillegas.

P. That on or about the 22nd day of November, 1962, the trailer in which Norma Gunther lives was ransacked.

Q. That on or about the 30th day of November, 1962, sugar was put in the gasoline tank of the automobile of Libuse Stepanek.

R. That on or about the 1st day of December, 1962, sugar was put in the gasoline tank of the automobile of Vernon White.

S. That on or about the 2nd day of December, 1962, sugar was put in the gasoline tank of the automobile of Dorothy Troch.

T. That on or about the 2nd day of December, 1962, bullets were fired through the window of the house of George Sadler.

U. That on or about the 4th day of December, 1962, sugar was put in the motor and gasoline tank of the automobile of Phyllis Olsen.

11. That pursuant to and in furtherance of said unlawful conspiracy, the Defendants caused the property of the Plaintiff to be smeared with paint and otherwise damaged and injured.

12. That the unlawful activities of Defendants have taken place in and about the City and County of Baltimore, State of Maryland, and that by these unlawful acts, the Defendants have violated the laws and public policy of the State of Maryland.

13. That the acts of the Defendants as more particularly set out above, were done for no legal purpose but rather to

cause serious damage, loss and injury to Plaintiff and to injure and destroy the business of the Plaintiff, and to prevent Plaintiff from producing that merchandise necessary to operate; that the Plaintiff has suffered irreparable harm and damage as a result of the aforesaid acts, wherefor the Plaintiff claims Five Hundred Thousand Dollars ($500,000.00) damages.

PETITION TO AMEND DECLARATION BY INTERLINEATION

Solo Cup Company, by its attorneys, Robert L. Sullivan, Jr., Barry I. Robinson and Sklar and Sullivan, petitions this Court as follows:

1. That heretofore the Plaintiff, Solo Cup Company, has filed an action at law to recover damages against the above named Defendants, as more particularly set out in the Declaration filed in this action.

2. That in the aforesaid Declaration your Petitioner mistakenly sued Local 994, International Brotherhood of Pulp, Sulphite and Paper Mill Workers, AFL-CIO.

3. That in fact the proper Defendant should have been Local 845, International Brotherhood of Pulp, Sulphite and Paper Mill Workers, AFL-CIO.

WHEREFORE, your Petitioner respectfully petitions this Court to pass an Order authorizing and permitting it to amend its Declaration in this case by Interlineation, by changing "Local 994" to "Local 845" in each and every place it appears therein.

SPECIAL PLEA TO THE JURISDICTION

Now comes the International Brotherhood of Pulp, Sulphite and Paper Mill Workers, AFL-CIO, and Floyd Van Deusen, defendants herein, appearing specially for the purpose of this Plea, and not generally, and say:

That the business of the plaintiff affects interstate commerce within the meaning of the National Labor Relations Act and therefore

That the Courts of the State of Maryland have no jurisdiction to entertain a suit for damages in the circumstances alleged by the plaintiff herein because such jurisdiction is pre-empted by the Taft-Hartley Act and must exist, if at all, as an action under the original jurisdiction of the United States District Court.

SPECIAL PLEA TO THE JURISDICTION

Now comes Leroy Francis Simms, Defendant herein, appearing specially for the purpose of this pleading, and not generally, and says:

That the business of the Plaintiff affects interstate commerce within the meaning of the National Labor Relations Act and therefore:

That the Courts of the State of Maryland have no jurisdiction to entertain a suit for damages in the circumstances alleged by the Plaintiff herein because such jurisdiction is pre-empted by the Taft-Hartley Act and must exist, if at all, as an action under the original jurisdiction of the United States District Court.

MEMO OF DEFENDANTS

This Declaration was filed for the Solo Cup Company, Plaintiff, against the International Brotherhood of Pulp, Sulphite and Paper Mill Workers, AFL-CIO (Serve on Floyd Van Deusen, 305 W. Monument Street); and Local 994 (Later amended to 845), International Brotherhood of Pulp, Sulphite and Paper Mill Workers, AFL-CIO (Serve on Floyd Van Deusen, 305 W. Monument Street); and Leroy Francis Simms; and Floyd Van Deusen.

The Local 845 filed a Motion to Quash Service of Process on the grounds that service as to them was made on Floyd

Van Deusen but that Van Deusen was not an agent of the local. Elizabeth Tellis, Recording Secretary, Local 845, filed an affidavit setting out that Van Deusen is not an officer of the local and is not authorized to accept service therefore.

The International Brotherhood of Pulp, Sulphite and Paper Mill Workers Leroy Francis Simms and Floyd Van Deusen filed Special Pleas To The Jurisdiction on the grounds that the Maryland State Courts have no jurisdiction to entertain a suit for damages because such jurisdiction is pre-empted by the Taft-Hartley Act and must exist, if at all, as an action under the original jurisdiction of the United States District Court.

The facts in the instant case of Solo Cup Company v. International Brotherhood, et al., come under the jurisdiction of Sections 7 and 8 of the Taft-Hartley Act, 29 USCA, Sections 157 and 158, pages 235 and 258.

29 USCA 157: Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title.

29 USCA (b): It shall be unfair labor practices for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title.

The Company brought this matter before the National Labor Relations Board, the General Counsel of the NLRB having issued the complaint on a charge dated December 13, 1962, alleging unfair labor practices proscribed by Section 8(b) (A) of the Act. On May 24, 1963, Findings of Fact

and Conclusions of Law were made and Recommended Order was made.

There is also another case between the Company and this Union which has just been argued before U. S. Circuit Court of Appeals. This involves alleged refusal on the part of the Company to bargain with the Union. The decision on this is expected shortly.

SUMMER 1960 MARYLAND LAW REVIEW contains an article by Leonard E. Cohen, Esq., entitled The Maryland Law of Strikes, Boycotts and Picketing. There is a sub-head on page 231 entitled "Preemption of State's Labor Jurisdiction by NLRA". It states as follows: "In a series of decisions, the Supreme Court of the United States has indicated that when federal labor law controls a situation, the states have no authority to act in the matter . . ."

> "Until recently it was believed that states might have greater authority to award damages than to grant injunctions in this area. This belief was fostered by several cases which contained language supporting such a conclusion. However, in *San Diego Unions v. Garmon*, 359 U.S. (1959), 79 S. Ct. 773, the Supreme Court recently held that such is not the case, that a state court cannot award damages in a situation where it could not grant an injunction. The Court distinguished the earlier cases, which had permitted state courts to award damages, on the ground that those cases involved violence and imminent threats to the public order, which were legitimate matters of state concern.
>
> "The Supreme Court decisions state rather clearly that when activity is either protected or prohibited by federal law, the states cannot regulate it. San Diego Unions v. Garmon also states that when the NLRB has not determined the legality of conduct under federal law, and the conduct ARGUABLY FALLS (Capitalization ours) within the compass of federal law, the states may not regulate the conduct. But if it appears that the activity is neither protected nor prohibited by federal law, it is not clear whether the states

may regulate it. One Supreme Court case suggests that it may. However, the following quotation from the Garmon case sh[illegible] that the issue is not yet settled:

> 'If the Board decides, subject to appropriate federal judicial review, that conduct is protected by Par. 7, or 8, THEN THE MATTER IS AT AN END, AND THE STATES ARE OUSTED OF ALL JURISDICTION . . .'" (Capitalization ours).

The said Maryland Law Review Article on page 235 discusses the Supreme Court case, *Youngdahl v. Rain-Fair, Inc.*, 355 U.S. 131 (1957), wherein a company had over a hundred employees, about one-third of whom engaged in a strike and picketing to compel the company to recognize a union. Various acts of violence and threats of violence resulted, such as puncturing tires, threatening the plant manager, name calling as the non-striking employees came to and left work, and breaking a window in the plant. The Court held that the state court could enjoin FUTURE VIOLENCE OR THREATS OF VIOLENCE, (Capitalization ours) but that it could not prohibit picketing per se since the pattern of violence was not so connected with the picketing that an injunction against violence would be ineffective if the picketing were permitted to continue."

Attention of this Honorable Court is drawn to the fact that in the case at bar the alleged misconduct is past. These acts were made a subject of complaint before the NLRB as an unfair labor practice under the Taft-Hartley Act, jurisdiction was assumed by the NLRB a cease and desist order was issued as to certain acts and this has been complied with. It is not now a matter or threat of imminent danger.

The matter of preemption in Maryland is summed up succinctly in the last paragraph of the sub-head on page 236:

> "In summary, the doctrine of preemption at the present time seems to have the following effect on the applicability of Maryland Labor Law to Maryland businesses: . . . If the NLRB takes jurisdiction over a busi-

ness, and the union activity is either prohibited or protected by federal law (or if the NLRB has not determined the status of the activity under federal law, but it arguably is prohibited or protected), Maryland has no jurisdiction over such activity. If the NLRB takes jurisdiction over a business, and the union activity is neither prohibited nor protected by federal law, it is not settled whether Maryland has jurisdiction. In any situation involving violence or public disorder, Maryland may act to regulate such breaches of the peace."

In the case at bar, jurisdiction was expressly taken by the NLRB and its order was duly issued and complied with by the Union. There is no matter of imminent threat of force or violence involved in the case.

Par. 6, page 311, BNA Labor Relations Expediter is entitled: Federal-state conflicts over jurisdiction; U.S. Supreme Court's federal preemption doctrine. "Activities that are potentially subject to federal regulation under Labor Management Relations Act may not be regulated by the states, *except where violence or coercive conduct is involved.* This, in general, is the federal preemption doctrine as enunciated by the U.S. Supreme Court in a long line of decisions.

"Perhaps the fullest elaboration of the doctrine was provided by the Court in the 1959 Garmon decision (San Diego Bldg. Trades Council v. Garmon, U.S. Sup. Ct. 1959, 43 Labor Relations Reporter Manual 2838). Summarizing past rulings and adding some new points, the Court spelled out the federal preemption doctrine as follows:

1. State jurisdiction must yield when conduct is "arguably" or "potentially" subject to LMRA, either as protected activity under Section 7 or an unfair labor practice under Section 8.

2. The initial determination on whether a particular activity is subject to the LMRA is exclusively for the NLRB. A "Question" of, possible state regulation may be raised

only where there has been a "clear determination by the NLRB that the particular activity is neither protected nor prohibited" by the LMRA or where there is compelling precedent (to the same effect) applied to essentially undisputed facts.

4. If conduct is potentially subject to LMRA, state regulation is precluded regardless of the remedy sought. THE PREEMPTION DOCTRINE APPLIES TO DAMAGE AWARDS AS WELL AS TO INJUNCTIONS, TO STATE COURT PROCEEDINGS AS WELL AS TO REGULATION BY A STATE LABOR AGENCY, TO ACTIONS BASED ON GENERAL STATUTORY OR COMMON LAW AS WELL AS TO PROCEEDINGS UNDER A STATE LABOR RELATIONS STATUTE.

* * * * * *

JOHN E. PARKS, ET AL., REPRESENTATIVES OF LOCAL 28, IBEW v. INTERNATIONAL BROTHERS OF ELECTRICAL WORKERS. U. S. DISTRICT COURT. DISTRICT OF MARYLAND. DAILY RECORD, MARCH 12, 1962.

Chief Judge Roszel Thomsen.

It was claimed that the Local engaged in a strike without approval of the International Union. The Local contends that the revocation of Charter of Local 28 was a breach of contract between the Local and the International and the Local has a right of action for such breach under sec. 301 (a) of Labor Management Relations Act (Taft-Hartley) 29 USCA 185(a).

The International challenged the jurisdiction of the Court because: (1) The facts alleged and proved do not come within any of the jurisdictional provisions relied on by the plaintiffs; (2) That all of them are within the primary jurisdiction of the National Labor Relations Board; (3) * * * (4) * * *.

The revocation of the charter HELD of Local 28, pursuant to the Decision and Order of the International President dated August 1, 1961, without a fair hearing and for

reasons and under the circumstances shown by the evidence, was a breach of the contract between the Local and the International, represented by the IBEW constitution, entitling the Local to relief under Sec. 301(a) of Taft-Hartley, 29 USCA 185(a). The only effective means to cure that breach is to require the defendant to set aside the revocation of the Charter of Local 28.

". . . consideration of the entire act, including the provisions of Sec. 4, as suggested in LINCOLN MILLS, and of the cases cited and discussed under "Jurisdiction," supra, convinces me that this case does not involve or grow out of a "labor dispute" within the meaning and intent of that term as defined in sec. 13, 29 USCA 113 and used in Sec. 7."

Under subhead: Likelihood of Conflict with NLRB Jurisdiction, Judge Thomsen's opinion states: "Local 28 has filed several charges with the NLRB charging bad faith, conniving with officers of IBEW to coerce the members of Local 28 in the exercise of their rights protected by Sec. 7 of the NLRB as amended. The International argues that the gravamen of both actions against it is the same as those charges; that both complaints allege acts which are subject to Secs. 7 and 8 of the NLRB, 29 USCA 157 and 158, and therefore come within the exclusive jurisdiction of the NLRB under 29 USCA 160. The International cites *San Diego Unions v. Garmon*, 359 U.S. 236 (1959) where the Supreme Court said: "When an activity is arguably subject to Sec. 7 or Sec. 8 of the Act (Taft-Hartley), the States as well as the federal courts must defer to the *exclusive* competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted". 359 U.S. at 245.

While potential conflicts of this nature have been avoided in certain areas by ousting jurisdiction of the courts over activities which might constitute unfair labor practices subject, to regulation by the NLRB, the courts have generally held that actions for breach of contract are not subject to such preemption. This Court has no jurisdiction

to decide whether the Maryland Chapter failed to bargain in good faith. And insofar as Local's complaint against the International is based upon a claim that the International conspired with and encouraged the Maryland Chapter not to bargain fairly, the complaint alleges an activity at least arguably subject to Secs. 7 and 8, and therefore subject to the primary jurisdiction of the NLRB.

In the Local 28 v. Internaional case, Judge Thomsen decided that what they had there was a breach of contract under Sec. 301(a) of Taft-Hartley, 29 USCA 185(a). This states: "(a) Suits for violation of contracts between an employer and a labor organization, representing employees in an industry effecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

Of course, as *Textile Union v. Lincoln Mills of Alabama*, 77 S. Ct. 912, pointed out breach of contract cases may be brought in the Federal Court. But as decided by *San Diego Unions v. Garmon*, 359 U.S. 236, (1959), inactivities which are arguably subject to Sec. 7 or Sec. 8 of the Taft-Hartley Act, State Courts as well as Federal Courts must defer to the *exclusive* competence of the National Labor Relations Board.

In the case at bar there was a complaint filed before the NLRB. The NLRB took jurisdiction under Sec. 7 and Sec. 8 of Taft-Hartley, 29 USCA Secs. 157 and 158, thereby settling the question as to whether it was a labor dispute or a contractural matter. A finding was made and complied with and that is the end of the matter. There is no imminent threat of violence in which injunction or an award of damages would serve as a deterrent inasmuch as whatever was done was done a considerable time in the past. The NLRB has made its finding, made its Order and this has been complied with. And there the matter under the *San Diego Unions v. Garmon*, 359 U.S. 236, must end.

SAN DIEGO TRADES COUNCIL, MILLMEN'S UNION, LOCAL 2020 v. J. S. GARMON, J. M. GARMON AND W. A. GARMON, 359 U. S. 236, 79 S. CT. 773, (1959)

The employers *(Garmon)* brought action against unions for injunction to restrain picketing and for damages. The Superior Court, San Diego County, rendered judgment for the employer, and the union appealed. The California Supreme Court, 29 P. 21, affirmed the judgment. On certiorari the United States Supreme Court, 353 U.S. 26, 77 S. Ct. 607, reversed the judgment insofar as it granted an injunction and remanded the case. The California Supreme Court, 49 Cal. 2 595, 320 P. 2 473, on remand, entered judgment awarding damages and the unions brought certiorari. The United States Supreme Court, Mr. Justice Frankfurter, held that where picketing by unions was arguably within compass of section of the National Labor Relations Act dealing with right of employees as to organization, collective bargaining, etc., or section dealing with unfair labor practices, California Courts had no jurisdiction to award employer damages for injuries caused by picketing, on ground that picketing constituted a tort under State law, though the National Labor Relations Board had declined to exercise its jurisdiction, presumably because amount of interstate commerce involved did not meet Board's monetary standards for taking jurisdiction.

Judgment Reversed.

FACTS: The case is before the Supreme Court for the second time. The present litigation began with a dispute between the petitioning, co-partners in the business of selling lumber and other materials in California. Respondents began an action in the Superior Court for San Diego County, asking for an injunction and damages. Upon hearing, the trial court found the following facts: In March 1953 the unions sought from Respondents an agreement to retain in their employ only those workers who were already members of the unions, or who applied for membership within 30 days. Respondent refused, claiming that none of their employees had shown a desire to join a union,

and that, in any event, they could not accept such an arrangement until one of the unions had been designated by the employees as a collective bargaining agent. The unions began at once peacefully to picket the respondent's pl: e of business, and to exert pressure on customers and suppliers in order to persuade them to stop dealing with Respondents. The sole purpose of these pressures was to compel execution of the proposed contract. The Court enjoined the unions from picketing and from the use of other pressures to force an agreement until delegation of bargaining agent. The court also awarded $1,000.00 damages for losses found to have been sustained.

At the time the suit in the state court was started, Respondents had begun a representation proceeding before the NLRB Regional Director declined jurisdiction.

HELD: Congress evidently considered that centralized administration of specially d signed procedures was necessary to obtain uniform application of its substantive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies. (Mr. Justice Frankfurter means the jurisdiction of the National Labor Relations Board). When the exercise of state power over a particular area of activity threatened interference with the clearly indicated policy of industrial relations, it has been judicially necessary to preclude the States from acting.

When it is clear or may fairly be assumed that the activities which a State purports to regulate are protected by Par. 7 of the National Labor Relations Act, or constitute an unfair labor practice under Par. 8, due regard for the federal enactment requires that state jurisdiction must yield.

At times it has not been clear whether the particular activity regulated by the States was governed by Par. 7 or Par. 8 or was, perhaps, outside both these sections. But courts are not primarily tribunals to adjudicate such issues. It is essential to the administration of the Act that these determinations be left in the first instances to the National

Labor Relations Board. What is outside the scope of this Court's authority cannot remain within a State's power and state jurisdiction too must yield to the exclusive primary competence of the Board.

The case before the Supreme Court was such a case. The adjudication in California has throughout been based on the assumption that the behavior of the petitioning unions constituted an unfair labor practice. This conclusion was derived by the California courts from the facts as well as from their view of the Act. It is not for us to decide whether the National Labor Relations Board would have, or should have, decided these questions in the same manner. When an activity is arguably subject to Par. 7 or Par. 8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted.

If the Board decides, subject to appropriate federal judicial review, that conduct is protected by Par. 7, or prohibited by Par. 8, then the matter is at an end, and the States are ousted of all jurisdiction.

Nor is it significant that California asserted its power to give damages rather than to enjoin what the Board may restrain though it could not compensate. Our concern is with delimiting area of conduct which must be free from state regulation if national policy is to be left unhampered. Such regulation can be effectively exerted through an award of damages as through some form of preventive relief.

DECISION OF HONORABLE ANSELM SODARO

February 18, 1964

In the Superior Court of Baltimore City

Dear Sir:

After consideration of the argument of counsel and the memorandum of law submitted by both parties, I have concluded to sustain the Special Plea to the Jurisdiction.

In lieu of filing a formal Opinion, I am adopting the reasoning and conclusions of law as set forth in the memorandum of counsel for the defendants.

Yours very truly,

s/ ANSELM SODARO

APPENDIX C

DECISION OF NLRB

Case No. 5-CB-517 September 9, 1963

International Brotherhood of Pulp, Sulphite and Paper Workers, AFL-CIO

and

Solo Cup Company, Baltimore, Maryland

144 NLRB No. 48

54 Labor Relations Reference Manual 1074

Before McCulloch, Chairman; Leedom and Brown, Members

The union was certified as the bargaining representative of the employer's production and maintenance employees on January 12, 1962. Thereafter, the union assisted the employees in setting up a plant local to represent them and then chartered the local as its Local 845. Simms was elected president of the local, and a negotiating committee was formed consisting of two international representatives and several representatives of the local, including Simms.

Negotiations began in February 1962, at which time the union submitted a proposed contract which listed both the international and local as signatories. Thereafter, the international recommended to the local that the company's offer be rejected, and, on the international's recommendation, members of the local voted to strike.

The local called the strike on November 1. The International indicated in a letter to the employer that the inter-

national executive board had voted to support the strike "morally and financially." During the strike, the international paid strike benefits to the strikers.

The local president assumed a leading role in the conduct of the strike. On one occasion, the local president and a member of the union's negotiating committee went to the home of an employee who, after being out on strike the first day, returned to work, asked her not to go into work, told her that she would benefit if she stayed out, and warned her that "a lot of things could happen" to her if she went in. They returned to her home later the same evening, renewed their previous appeals that she not work, and repeated their prior warnings to her.

The employee worked the following day and that night heard a sound in her home as of someone turning or jiggling the doorknob. She went to the front upstairs bedroom window and from there she saw the local president standing directly across the narrow street facing toward her.

About two weeks after the strike began, the local president met an employee at a service station away from the plant and asked him if he knew how to interrupt the electrical supply for the plant. Also, on a number of occasions, the local president threatened to have this employee "worked over," and on one occasion commented that the employee had a nice car and that "it would be a shame if anything happened to it." On still another occasion, when the employee was approaching the plant in his car, the local president, driving in the opposite direction, ran his car over on the employee's side of the road forcing the employee to stop in order to avoid a collision.

The local president told another employee when the employee explained that he could not afford to go out on strike, that if the employee did not go out "you know what's going to happen, you know I am going to get you." Sometime later, the union president repeated this threat.

On another occasion, the local president told the employee that he should tell another employee that the union

president was going to put a ladder up to her second floor apartment and set it on fire. On another occasion, he told the employee that he was "going to get" another employee and the next time he "wouldn't miss." When the employee and another employee were cleaning snow off the railroad tracks entering the plant, the local president attempted to run over them with his car.

About two weeks before the hearing in this proceeding, the local president and another man placed themselves so that the employee would either have to bump into them or ask them to move out of the way in order to leave a diner. The employee went out through another door but the local president and the other man, whose wife was an employee, followed. The other man accused the employee of having called him abusive names, stating that the union president had so reported. Although the employee denied having said anything, the other man struck at the employee.

However, the evidence does not establish that the local union president was responsible for an incident when an employee's car was stopped by strangers or for the stoning of another employee's home. Nor will the evidence support a finding that the union president made a threatening telephone call to another employee.

"While we agree with the Trial Examiner that the Respondent was responsible for Simms' coercive conduct,[2] we reach this conclusion only on the basis of the following considerations.[3] * * *.

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[2] In view of this finding, we deem it unnecessary to and therefore do not pass upon the Trial Examiner's conclusion that the Respondent is also responsible for the conduct of Reinke, a member of the local and substitute member of the negotiating committee, who participated together with Simms in certain of the acts of coercion found to be unlawful.

[3] In resolving this issue, we have taken official notice of and considered the record and the Board's decision in Solo Cup Company, 142 NLRB No. 130, 53 LRRM 1253, which involved the same parties as herein and in which the Company was found to have violated Section 8(a)(5) in connection with the negotiations preceding the strike involved herein. *Armstrong Tire & Rubber Company*, 111 NLRB 998, 35 LRRM 1626.

"We find that the local and the Respondent International conducted the strike as a joint venture. Thus, the International was the certified bargaining representative of the Company's employees; negotiations with the Company were conducted by a joint negotiating team of members of both the Respondent and the local; each was to be a signatory to the proposed contract submitted to the Company; the strike resulted from the inability of the Respondent, as well as the local, to reach agreement with the Company on a new contract; and while the local called the strike, the International had recommended strike action, and subsequently sanctioned the strike and supported it financially.

"The Board has held that where two unions conduct a strike as a joint venture, each is responsible for the conduct of the agents of either.[4] Since Simms was the President of the local, he was authorized to act as agent for the local to assist in the conduct of the strike.[5]

As the Trial Examiner found, and we agree, that the coercive conduct engaged in by Simms was in furtherance of the strike, which we have found was a joint venture of the Respondent and the local, we find that the Respondent was responsible for the conduct of Simms in threatening and coercing employees."

Order: Cease and desist from restraint and coercion found herein; in any like or related manner restraining or coercing employees in exercise of their self-organizational rights. Post notice.

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[4] United Steelworkers of America, AFL-CIO, etc. (Vulcan-Cincinnati, Inc.), 137 NLRB 95, 50 LRRM 1236.

[5] International Longshoremen's and Warehousemen's Union (Sunset Line and Twine Company), 79 NLRB 1487, 23 LRRM 1001.

APPENDIX D

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 140, 146, 29 U.S.C. (1956 ed.) Secs. 141, *et seq.*) are as follows:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 158(a)(3) of this title.

SEC. 8(b) It shall be an unfair labor practice for a labor organization or its agents—

> (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in Section 157 of this title: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances.

SEC. 10(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in Section 158 of this title) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise.

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In the

Supreme Court of the United States

OCTOBER TERM, 1964

No. 963

INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS, AFL-CIO

AND

LOCAL 845, INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS, AFL-CIO

AND

LEROY FRANCIS SIMMS AND FLOYD VAN DEUSEN,
Petitioners,

v.

SOLO CUP COMPANY,
Respondent.

ANSWER TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

The Respondent respectfully prays that the Petition for a Writ of Certiorari, heretofore filed in the above entitled matter, to review the judgment of the Court of Appeals of Maryland entered December 7, 1964, be denied.

OPINIONS BELOW

The opinion of the Court of Appeals of Maryland is unofficially reported in the other following reporting service :

Commerce Clearing House—Labor Relations
50 LC P 51,128;

Bureau of National Affairs—Labor Relations
57 LRRM 2645.

QUESTION PRESENTED

The opinion and decision of the Court of Appeals of Maryland in the within case raises the following question:

Whether a State Court has jurisdiction to entertain a common law tort action for damages sustained as the result of violence during the course of a labor dispute.

REASONS FOR DENYING PETITION

The Petitioners seek to invoke the jurisdiction of this Honorable Court to review the subject decision of the Court of Appeals of Maryland on three grounds:

I. The decision is contrary in both reasoning and result to decisions of this Court.

II. The previous decisions of this Court and of the highest courts of several of the states are ambiguous and in conflict.

III. The previous decisions of this Court and the highest courts of several of the states which distinguish between several classes of "common law tort actions" defeats the legislative purpose and intent of the National Labor Relations Act and serves no valid purpose.

Respondent respectfully submits that an analysis of each of the above arguments reveals that they are devoid of merit and, accordingly, unsustainable. In order to preserve the organization of Petitioners' presentation, we shall discuss each argument in the order in which they are set forth in the Petition for a Writ of Certiorari.

ARGUMENT

I.

The decision is in accord with the previous decisions of this Court in both reasoning and result.

In 195 , this Court filed its decision in the case of *United Construction Workers vs. Laburnum Construction Corp.*[1] This case involved a common-law tort action filed by an employer seeking damages against the union based on the alleged commission of certain threats and acts of violence by several union officers and employees of the company, which employees were also members of the defendant union. The complaint alleged, *inter alia*, that the purpose of the union's conduct was to deprive the company of profits it would otherwise have earned. The Circuit Court of the City of Richmond awarded judgment in favor of the company in the amount of Two Hundred Seventy-Five Thousand Dollars ($275,000.00). On appeal, the Virginia Supreme Court of Appeals affirmed the decision of the lower court, but modified the judgment to One Hundred Twenty-Nine Thousand Dollars ($129,000.00).

This Court granted Certiorari on the question of whether the union's conduct was within the exclusive jurisdiction of the National Labor Relations Board " ' so as to preclude the state court from hearing and determining the issues in a common-law tort action *based upon this conduct* (emphasis supplied)'. 346 U.S. 936, 74 Supreme Court 374."[2] The Court accepted the fact that the company was operating in interstate commerce, within the meaning of the Labor Management Relations Act (Act), and assumed, for the

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[1] 347 U.S. 656, 74 S. Ct. 833 (1954)

[2] *Ibid.*, 347 U.S. 659, 74 S. Ct. 834, 835.

purposes of the case, that the conduct complained of and for which damages were sought to be recovered, constituted an unfair labor practice under Section 8(b) of the Act.[3]

The Union contended that the plenary legislation of Congress granting jurisdiction to the National Labor Relations Board (Board) excluded state courts from entertaining common-law tort actions for recovery of damages. In affirming the decision of the state court, this Court held that the Labor Management Relations Act of 1947 had not given the Board such exclusive jurisdiction over the subject matter of a common-law tort action for damages as to preclude an appropriate state court from hearing and determining it. Issues where such conduct constitutes an unfair labor practice under that Act.

> * * * Congress has neither provided nor suggested any substitute for the traditional state court procedure for collecting damages for injuries caused by tortious conduct. For us to cut off the injured respondent from this right of recovery will deprive it of its property without recourse or compensation. To do so will, in effect, grant petitioners immunity from liability for their tortious conduct.[4]

Petitioners claim that three cases, namely *Garner vs. Teamsters, Chauffeurs and Helpers Local Union No. 776*,[5] *Weber vs. Anheuser-Busch, Inc.*,[6] and *San Diego Building Trades Council vs. Garmon*,[7] are contrary in both reasoning and result to the decision of the Maryland Court of Appeals, as well as the *Laburnum* decision, on which the Maryland

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[3] 61 Stat. 140, 29 U.S.C., Sec. 157.
[4] 347 U.S. 663, 664, 74 S. Ct. 837
[5] 346 U.S. 485, 74 S. Ct. 161 (1953).
[6] 348 U.S. 468, 75 S. Ct. 480 (1954).
[7] 359 U.S. 236, 79 S. Ct. 773 (1959).

Court relied. These cases pose no problem and may be easily disposed of.

Weber involved a complaint filed in a Missouri state court seeking an injunction against the union on the premise that the strike conducted by the union constituted a secondary boycott. The state court entered the injunction against the union and its decision was affirmed, on appeal, by the Missouri Supreme Court. This Court granted Certiorari on the question of whether the state court had jurisdiction to enjoin the strike, or whether its jurisdiction had been preempted by the authority vested in the National Labor Relations Board. In reversing the state court decision, this Court held that the activity complained of was solely within the jurisdiction of the Board and the jurisdiction of the state court was thereby preempted. Justice Frankfurter, writing this court's majority opinion, clearly distinguished the facts of the *Weber* case from those cases in which the state court granted relief under the theory that the activities were neither prohibited nor protected, *and noted that the conduct found to exist by the state court was not the conduct that amounted to the kind of mass picketing and overt threats of violence which would give the state courts jurisdiction.*

Garmon involved a complaint by the employer seeking an injunction and damages against the union as a result of certain alleged illegal peaceful picketing. The trial court granted the injunction and awarded $1,000.00 damages for losses found to have been sustained by the employer. On appeal to the California Supreme Court, the judgment of the trial court was upheld. A Petition for Certiorari was filed, granted, and the case was decided with two companion cases.

This Court held that the refusal of the National Labor Relations Board to assert jurisdiction did not vest in the state jurisdiction over activities from which it would otherwise be preempted. However, since it was not clear whether the judgment for damages could be sustained under California law, this Court remanded the case for determination of that single issue. On remand, the court set aside the injunction, in accordance with the mandate, but sustained the award of damages. This Court again granted Certiorari to determine the issue of the jurisdiction, *vel non*, of a state court to award damages arising out of a peaceful union activity which it could not enjoin.

In the majority opinion, written by Justice Frankfurter, this Court held that to allow a state court to award damages against a union for peaceful picketing would be to allow the states a regulatory and governing effect in union conduct, thereby defeating the legislative intent of the several federal labor relations laws, namely, the establishment of a uniform national policy regulating labor relations in industries affecting interstate commerce.

The Court, however, was very careful to distinguish the Garmon case from those cases in which it had allowed the state to grant compensation for the consequences, as defined by the traditional law of courts, of conduct marked by violence and imminent threats to the public order. The Court said, at 359 U.S. 247, 248:

> * * * State jurisdiction has prevailed in these situations because the compelling state interest, in the scheme of our federalism, in the maintenance of domestic peace is not overridden in the absence of clearly expressed congressional direction. We recognize that the opinion in *United Construction Workers vs. Laburnum Construction Corp.*, 347 U.S. 656, etc. found

> support in the fact that the state remedy had no federal counterpart. But that decision was determined as is demonstrated by the question to which review was restricted, by the "type of conduct" involved, i.e., "intimidation and threats of violence." In the present case there is no such compelling state interest.

Garner, supra, arose when an employer filed a bill for an injunction seeking to enjoin *peaceful* picketing as a violation of the Pennsylvania Labor Relations Law. The lower court granted the injunction, but was reversed by the Supreme Court of Pennsylvania on the grounds that the employer's grievance fell within the jurisdiction of the National Labor Relations Board and the state court was thereby preempted. This Court, after granting Certiorari, affirmed, holding that the Congressional action in passing the federal labor relations statutes preempted the jurisdiction of the state courts, and where a private right conflicted with a public one, the latter will prevail.

The Garner case did not, however, overrule the doctrine established in the earlier *Wisconsin*[8] cases. The opinion clearly distinguished the subject facts from cases of "mass picketing, threatening of employees, obstructing streets and highways, or picketing homes."

> * * * We have held that the state still may exercise "its historic powers over such traditionally local matters as public safety and order and the use of streets and highways." (cit. om.) * * *[9]

In delivering the opinion on behalf of the Maryland Court of Appeals, Judge Sybert not only applied the rationale

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[8] *International Union vs. Wisconsin Board*, 336 U.S. 245; *Allen-Bradley Local vs. Wisconsin Board*, 315 U.S. 740.

[9] 346 U.S. 488, 74 S. Ct. 164.

in *Garmon*, but, in fact, relied on the above-quoted wording[10] from that decision in support of his opinion in the subject case. It is respectfully submitted that Petitioners' argument that the decision of the Maryland court would defeat the rationale of this Court set forth in the *Garner* and *Garmon* opinions cannot be sustained by any reading of Judge Sybert's opinion, no matter how strained. The first paragraph of his opinion states the questions before the court as being,

> * * * (W)hether or not the state courts have jurisdiction to entertain a common law tort action for damages for injuries sustained *as the result of violence* in a labor dispute (emphasis supplied).[11]

Additionally, Judge Sybert, in his opinion, specifically answers Petitioners' contention that *Garmon* would preclude state court jurisdiction, wherein he states:

> The Appellees maintain that *Garmon* precludes the state court from entertaining the suit here because there is no longer any imminent threat to public order. But even if it could be assumed that the effects of the actual disorder do not linger, we do not agree that jurisdiction is thus precluded. The significant point is that, at the time of the acts of violence complained of, there was an imminent threat to, and, indeed, disruption of, public order, and under such circumstances the state is vitally interested. * * *[12]

Accordingly, Respondent respectfully submits that the decision of the Maryland Court is entirely in accord with the controlling decisions of this Court, and accordingly, the first argument advanced by Petitioners must fail.

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[10] *Infra*, Pages 6, 7; Petitioners' Appendix, page 5a.

[11] Petitioners' Appendix, page 1a.

[12] Petitioners' Appendix, page 5a.

II.

The previous decisions of this Court and of the highest courts of several of the states are in accord.

Petitioners' second argument in support of its Petition for Certiorari is based on the contention that several decisions of this Court, and of the highest court of several of the states, are uncertain and in direct conflict.

Petitioners discuss the decisions of this Court in the *Laburnum*[13] case and in *International Union vs. Russell*,[14] and, after comparing their interpretation of the *Garmon* opinion, conclude that, "the guiding principles of these cases are uncertain and productive of much litigation."[15] Petitioners then cite seven state court cases which they contend illustrate the conflict between the decisions of this Court and the opinions expressed by the respective states therein.

Respondent respectfully submits that even perusal of the opinions of the seven cases cited by Petitioners fails to indicate such a conflict exists.

In *Blum*,[16] the Plaintiff, a plant manager, instituted a suit against the defendant union for damages arising as a result of certain allegedly libelous material printed in a union publication. One of the defenses raised by the defendant was a preemption of state jurisdiction over the matter by virtue of the National Labor Relations Act. The lower court denied a motion for summary judgment on this

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[13] *Supra.*

[14] 356 U.C. 634, 78 S. Ct. 932 (1958).

[15] Petitioner's Brief, page 13.

[16] *Blum vs. International Association of Machinists, AFL-CIO*, 192 A.2d 842, 80 N.J. Super. 37 (1963).

defense, and an appeal was taken to the Appellate Division of the New Jersey Superior Court. The Court reversed the lower court, holding that the action brought by the Plaintiff was " 'arguably' subject to a §7 or §8 of the federal act . . . ."[17] The court distinguished those cases which arose as a result of violence or threats of violence, however, and discussed the state jurisdiction allowed by *Russell* and *Laburnum*.[18]

In *Fullerton*,[19] an action was brought against the defendant union seeking damages as well as injunctive relief as a result of the union's alleged denial of membership to the Plaintiff and alleged interference with his right to obtain employment. The lower court dismissed the case and the Plaintiff appealed. The California District Court of Appeals affirmed the lower court, holding that under the doctrine in *Garmon* the jurisdiction of the state court was preempted. Again, however, the court distinguished those cases of mass picketing and violence, noting that,

> * * * It is obvious from the court's discussion in *Weber vs. Anheuser Busch, Inc.*, 348 U.S. 468, and the Garmon case, *supra*, that the holding in Russell and Laburnum is limited to controversies involving threats of violence and does not automatically extend to all awards of damages.[20]

Harry S. Goodman, Productions, Inc. vs. Collyer[21] involved a decision by the New York Supreme Court for Queens County which held that a state court had no jurisdiction to entertain a bill for an injunction seeking to

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[17] *Ibid.*, 192 A.2d 848, 80 N.J. Super. 47.

[18] *Ibid.*, 192 A.2d 849, 80 N.J. Super. 48.

[19] *Fullerton vs. International Sound Technicians, etc.*, 15 Cal. Rptr., 451, 194 A.C.A. 848 (1961).

[20] *Ibid.*, 15 Cal. Rptr. 460.

[21] 204 N.Y.S. 2d 1001 (1960).

restrain the defendant union from allegedly threatening radio stations and other communications media which broadcast programs sponsored by the plaintiff. The New York court premised its opinion on the theory that the activities complained of were prohibited by Section 8(b)(4)(ii) of the Act, and were, thereby, exclusively within the jurisdiction of the National Labor Relations Board.

Just as the other cases cited by Petitioner herein are devoid of language to support their argument of conflict with the instant decision, the activities complained of in *Goodman* were not frought with any violence or similar disorder which would bring the case within the area in which the state courts have retained jurisdiction.

The New York Supreme Court for Onondaga County held in *Kominski vs. Western Express Company*[22] that a state court did not have jurisdiction to entertain an action brought by an employee seeking to recover damages against his employer as a result of alleged acts by the employer causing the employee to resign because of his union activity. The court's opinion clearly distinguished *Laburnum* as being "limited to those cases in which the conduct complained of is 'marked by violence and imminent threats to the public order' (cit. om.)"[23]

Similarly, in the *Precision Scientific Co.*[24] case, the Illinois Appellate Court held that a state court had no jurisdiction to entertain that part of an employer's complaint seeking an injunction against a peaceful picketing on the basis of alleged Communist domination of the defendant union and illegality of the purpose of the strike.

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[22] 37 Misc. 2d 992, 234 N.Y.S. 2d 976 (1962).

[23] *Ibid.*, 37 Misc. 2d 993, 234 N.Y.S. 2d. 978.

[24] *Precision Scientific Co. vs. International Union*, 2 Ill. App. 2d 531, 120 N.E. 2d 356 (1954).

However, the Illinois Appellate Court affirmed that portion of the injunction entered by the lower court which restrained intimidation, force and violence.[25]

The *Stork Restaurant*[26] case was an appeal to the Appellate Division of the New York Supreme Court from a lower court decision granting the employer's motion for a temporary injunction to restrain peaceful picketing by employees seeking better working conditions. The *Terrizzi Beverage*[27] case involved an appeal to the Pennsylvania Supreme Court from the issuance, by the lower court, of a temporary injunction enjoining alleged unlawful acts contributing to and culminating in an interference with a contractual relationship.

In both *Stork Restaurant* and *Terrizzi Beverage*, the Pennsylvania courts respectively reversed the lower court decisions, holding that the jurisdiction of the state courts was preempted by the Board. Both cases, however, clearly noted the area in which state court jurisdiction has been sustained; *i.e.*, the area involving violence and public disorder.[28]

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[25] The court refused that part of the injunction referring to "massing and congregating, or collecting in crowds . . . " as being too broad and indefinite. 2 Ill. App. 2d 543, 120 N.E. 2d 362.

[26] *Stork Restaurant, Inc. vs. Fernandez*, 185 N.Y.S. 2d 280, 8 App. Div. 2d 38 (1959).

[27] *Terrizzi Beverage Company vs. Local Union 130, etc.*, 184 A.2d 243 (1962).

[28] In *Stork*, the Court cited *Laburnum* and *Russell* as authority for the jurisdiction of the state court where "the activity complained of has been marked by actual or threatened violence to persons or destruction of property . . . " 185 N.Y.S. 2d 286, 8 App. Div., 2d 43. In *Terrizzi*, the Court said, "There is no doubt that the Pennsylvania courts still retain jurisdiction to enjoin and prevent acts of violence and breaches of the peace, even in a labor dispute. * * * " 184 A.2d 246.

It is respectfully submitted that an analysis of the authorities discussed above, clearly shows that the ambiguity and conflict in the authorities as alleged by Petitioners, does not, in fact, exist and, accordingly, the instant case fails to warrant the consideration of this Court.

III.

The existing decisions of this Court and of the highest courts of the several states should not be overruled.

Petitioners, in their concluding argument, advance three reasons why the existing case law should be overruled, the effect of which would preempt the state courts from *any* jurisdiction over conduct which is "prohibited or protected" by the Act.

First, Petitioner submit that such jurisdiction defeats the purposes of the Act and is "an intrusion upon the enunciated legislative (sic) purpose."[29] This Court has clearly decided to the contrary in *Laburnum* as heretofore discussed herein.[30]

Petitioners' second reason for overruling the existing authorities is completely ludicrous and devoid of merit. Petitioners contend that the distinction allowing the exercise of state court jurisdiction when violence or threat of disorder exists, serves no valid purpose. They premise this argument on the theory that all tort recoveries are private rights, and it is a fallacy to protect some private rights and not others. Albeit an interesting argument, it cannot prevail in this case, since the line between state court jurisdiction and the preemption of that jurisdiction is not

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[29] Petitioners' Brief, page 15.

[30] See discussion of *Garner, supra* at 347 U.S. 664, 665; and discussion of legislative history of the Act of 347 U.S. 666-669.

determined by the "public or private" nature of the right.[31] Additionally, the weakness of the argument is further revealed by Petitioners' acknowledgement that the several states should have jurisdiction in the area of violence and disorder to entertain criminal prosecutions and suits invoking injunctive relief, the latter, in the State of Maryland, being also a completely private right.

Carrying Petitioners' proposition one step further, if the Act were construed to foreclose *all private* remedies for activities or conduct within its ambit, and to allow *all public* ones, the effect would be to vest jurisdiction in all State Labor Boards (public administrative bodies) over any act or conduct which constitutes a tort, notwithstanding the provisions of Section 7 or Section 8 of the Act. This Court has already dealt with that problem and the conflicts which would be raised thereby. *Guss vs. Utah Labor Relations Board*, 353 U.S. 1 (1957).

If, however, *all state jurisdiction* were to be divested as Petitioners suggested in their Memorandum to the Superior

[31] See discussion of public vs private right in opinion of Justice Jackson in *Garner, supra*, 346 U.S. 492-501.

[32] Petitioners' Appendix, p. 16a. Petitioners' Memorandum to the Superior Court actually stated that state courts have jurisdiction over conduct involving violence only where there is a threat or imminent danger of such conduct, and after the act was done or the threat passed, so did state jurisdiction. Respondent submitted, in its brief to the Court of Appeals of Maryland, that a reading, interpretation or application of such a proposition would, for all practical purposes, legalize the user of medieval torture chambers for the purpose of "encouraging" union membership or the burning of company property, for the purpose of enforcing demands for better wages or working conditions. Respondent conceded, however, that under *Petitioners' interpretation* of the existing law, such would be the case only if the company met the jurisdictional standards of the NLRB *and* there was no prior existing injunction.

Court of Baltimore City,[32] the totality of the ensuing lawlessness and disorder which would result defies the imagination.

Additionally, permissible state regulation of preempted areas by means of injunction, *only*, while restricting all complaints seeking damages, would not further the attempt to comply with the desired unifo: . national policy in this area. As Justice Frankfurter noted in *Garmon* at 359 U.S. 246, 247.

> Nor is it significant that California asserted its power to give damages rather than to enjoin what the Board may restrain though it could not compensate. Our concern is with delimiting areas of conduct which must be free from state regulation if national policy is to be left unhampered. Such regulation can be as effectively exerted through an award of damages as through some form of preventive relief. The obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy. Even the States' salutary effort to redress private wrongs or grant compensation for past harms cannot be exerted to regulate activities that are potentially subject to the exclusive federal regulatory scheme. • • •

Similarly, Judge Sybert was equally unimpressed as he summarily dismissed Petitioners' argument, by stating:

> The appellees (Petitioners) maintain that Garmon precludes the state court from entertaining the suit here because there is no longer any imminent threat to the public order. But even if it could be assumed that the effects of the actual disorder do not linger, we do not agree that jurisdiction is thus precluded. • • • The appellees (Petitioners') theory is novel. They cite no authority for the proposition that an action to recover for injury resulting from a tort, to be maintainable, must be filed during the continuance of the tort. • • •

> The theory advanced, extended to its logical conclusion, would mean that if violence were discontinued at any stage of the litigation, the suit must perforce be dismissed, only to have the litigious treadmill reactivated or halted at the caprice of those responsible for violence. We do not think the interpretation contended for can reasonably be distilled from the NLRA or the Supreme Court decisions. Application of such a theory would in some cases be tantamount to state condonation of violence during labor disputes.[33]

Petitioners' third reason concludes that the continued permitted maintenance of tort actions as in the case at bar "will break down, erode and undermine the Act.[34] Petitioners present no argument or authority to support this proposition for the obvious reason that the decision of the federal courts, the Board and the courts of the several states are clearly contrary.

CONCLUSION

It is respectfully submitted that for the reasons and upon the authorities set forth herein, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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[33] Petitioners' Appendix, pages 5a, 6a.

[34] Petitioners' Brief, page 18.